

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Jesi Ray Lant,

Plaintiff,

1:15-cv-02073-AA

v.

ORDER

Frank Skrah, et al.,

Defendants.

McShane, District Judge.

Plaintiff filed a complaint under 42 U.S.C. § 1983, alleging defendants violated his rights during his detention in the Klamath County Jail on April 30, 2014 through May 1, 2014. Plaintiff alleges Constitutional claims for "unsanitary cell conditions," excessive force, and denial of adequate medical care. Plaintiff also alleges two claims under the Oregon Constitution.

All of plaintiff's claims fail as a matter of law because they are alleged against "defendants" collectively. Plaintiff has not alleged any specific facts against specific individual

defendants.

In order to state a claim against a named defendant, plaintiff must allege specific facts about that defendant and identify how that defendant's conduct violated his rights. General allegations are insufficient. The absence of any factual allegations against a named defendant will entitle that defendant to have the complaint dismissed as to him, pursuant to Fed. R. Civ. P. 12(b). Polk v. Montgomery County, 548 F. Supp. 613, 614 (D.Md. 1982). See also, Morabito v. Blum, 528 F.Supp. 252, 262 (S.D. N.Y. 1981), see also Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007).

Plaintiff's complaint is subject to dismissal for failure to state a claim because plaintiff fails to allege specific fact as to specific individuals.

Arguably this pleading deficiency could be cured by amendment. However, defendants have filed a Motion for Summary Judgment (#24). On November 14, 2014, plaintiff was sent a summary judgment advice notice (#31) advising him of the federal rules concerning summary judgments and what he must do to avoid having his case dismissed. Plaintiff was advised that his response was due by December 19, 2016 and that defendants' motion for summary judgment would be taken under advisement by the court on December 20, 2016. Plaintiff has not filed a response.

Defendants motion for summary judgment is 19 pages long and responds in detail to each of plaintiff's claims with cogent argument supported by the declarations of

Jeanette Davidson (#25), Joni Stewart (#26), Michael Thompson (#27), Shawn Garlock (#28), Valerie Neese (#29), and Gerald Warren (#30).

The facts established in the declarations have not been controverted by plaintiff. Defendants' arguments and supporting facts establish that there is "no genuine dispute as to any material fact, and that defendants are "entitled to judgment as a matter of law." Fed. R. Civ. P. 56.

A party is entitled to summary judgment where the documentary evidence produced by the parties permits only one conclusion. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 251-52(1986). "If the moving party meets its initial burden of showing the absence of a material and triable issue of fact, the burden then moves to the opposing party, who must present significant and probative evidence tending to support its claim or defense. Intel Corp. V. Hartford, 952 F.2d 1551, 1558 (9th Cir. 1991). In other words, the non-moving party (plaintiff in this case) must produce sufficient evidence demonstrating to the court that there are genuine issues of material fact to be decided at trial. Fed. R. Civ. P. 56(e). To do this, plaintiff must point to specific evidence in the

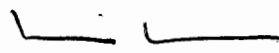
record. Celotex v. Catrett, 447 U.S. 317, 324 (1986).

In this case, defendants have satisfied their initial burden. Although being advised of the summary judgment rules and afforded an opportunity to do so, plaintiff has not presented any evidence or arguments in response.

Therefore, defendants' Motion for Summary Judgment (#24) is allowed. The Clerk of the Court is directed to enter a judgment dismissing this action with prejudice.

Any appeal from an order adopting this Order or Judgment dismissing this case would be frivolous and not taken in good faith. Therefore, plaintiff's in forma pauperis status is revoked.

DATED this 29 day of December, 2016.



Michael McShane
United States District Judge